IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.672 of 1996

Perumal ... Appellant

-Vs-

State by
Inspector of Police,
Kunnam Police Station,
Trichy District. ... Respondent.

Criminal Appeal against the judgment dated 29.08.1996 made in S.C. No.79 of 1996 on the file of III Additional District Judge, Tiruchirappalli District.

!For appellant : Mr.C.Selvaraj

^For respondent : Mr. A.N.Thambidurai,
Government Advocate.
(Crl. Side)

:J U D G M E N T

First Accused in S.C.No.79 of 1996 on the file of learned III Additional Sessions Judge, Trichy is the Appellant. Aggrieved by the conviction (by the judgment dated 29.08.1996) under Sec.304 (ii) I.P.C. and sentencing him to undergo Rigorous Imprisonment for five years, Appellant / A.1 has preferred this appeal. Accused 2 to 6 were acquitted of all the charges.

2. P.Ws.1, 2, 3 and 6 are related as under:-

Periyasamy Thevar - Father
(deceased)
|
- - - - - - - - - - - - - - - - -
| |
| |
Subramanian Paramasivam
(P.W.6) (P.W.1)
|

- - - - - - - -
| |
| |
Chitra(PW2) Thaneshwari
wife of (P.W.3)
P.W.1 Sister-in-law
of P.W.1
Accused are related as under:-

Chinna Pillai (Father)
|
- -
| | |
| | |

Perumal (A1) Karuppan (A2) Dharman (A3)
| |
| | |
Bhaskaran (A4) Ponnammal (A6) Palaniammal
Daughter of A.2 (A5)
wife
of A.3
Prosecution witnesses 1, 2 and 6 and the Accused are Pangalis.

3. Case of the prosecution in brief could be stated thus:-
The Accused and P.Ws.1, 2, 3 and 6 are related and Pangalis. On enjoyment and dividing of 3 acres of land in Thenur Village, there was previous enmity between Periasamy and the family of the Accused. P.W.6 - Subramanian is working as driver in Chennai. In Thenur Village, Iyanar Festival was scheduled for 08.06.1993. For celebrating the Festival, P.W.6 came to Thenur Village. At about 1.00 p.m. on 07.06.1993, P.W.6 in a drunken mood questioned A.2 - Karuppan as to why they were frequently quarrelling on the land dispute. He is alleged to have questioned Karpagam, daughter of A.1 - Perumal also. At that time, the Accused have assaulted P.W.6. On hearing about the same, P.W.1 - Paramasivam came to the place and pacified his brother P.W.6. To avoid any further quarrel, P.W.6 was sent to Chennai.

4. On the evening of 07.06.1993, in front of the house of one Thangavel Teacher, questioning the conduct of P.W.1 in sending away his brother P.W.6 to Chennai, A.1 took Aruval and cut P.W.1 on his forehead. A.2 had beaten P.W.1 with stick. A.4 had also beaten P.W.1 all over his body and forehead with stick. When deceased Periyasami came and intervened, A.1 beat him on the left side back (,lJ tpyh KJF). A.4 beat the deceased on the right forearm. Other Accused had also beaten Periyasami with sticks. P.W.1 and Periyasami ran away and they were chased and beaten by the Accused.

5. Upon hearing about the occurrence, P.W.5 - Murugesan came and saw P.W.1 and Periyasami with injuries. He had taken them to Ariyalur Government Hospital, where they were admitted at 5.00 p.m. In the hospital, P.W.10 - Dr.Ilamvazhuthi had treated P.W.1 and noted lacerated injuries on the

forehead, right temporal area and abrasions on the right middle finger and right shoulder. Ex.P.9 is the Wound Certificate. At the same time, P.W.10 had also admitted Periyasami in the hospital and contusion on the left back of the abdomen and abrasion over rib and also abrasion on the right face were noted (Ex.P.7 - Accident Register). Periyasami succumbed to the injuries on 08.06.1993. Intimation was sent to Ariyalur Police Station.

6. P.W.12 - Head Constable, attached to Ariyalur Police Station received intimation at 12.10 p.m. from Thenur Government Hospital and sent the same to Kunnam Police Station by Telegram. P.W.13 - Constable received the intimation from P.W.12 and intimated the same to P.W.15 - Sub Inspector of Police.

7. On receipt of intimation from P.W.13, P.W.15 went to Ariyalur Government Hospital. He has examined P.W.1 and recorded his statement Ex.P.1. On the basis of Ex.P.1, a case was registered in Crime No.13 9 of 1993 under Ss.147, 148, 324 and 302 I.P.C. under Ex.P.11 - First Information Report.

8. P.W.16 - Inspector of Police had taken up investigation. Inquest was held in Ariyalur Government Hospital on the body of deceased Periyasami. Ex.P.12 is the Inquest Report. After inquest, the body was sent for autopsy. Pursuant to the requisition, Dr.Balakrishnan (since dead) had conducted Autopsy and noted external injuries -
(i) a big contusion injury situated on the left side renal region
(ii) a lacerated injury situated on the right upper 1/3rd of the lateral aspect of the right forearm

and also noted the internal injuries on internal examination-

THORAX: (i) clotted blood situated on the left side 3, 4 and 5 ribs.
(ii) 3, 4 and 5th ribs fracture at sterno costal junction.
(iii)about 500 ml of blood present in the Thoracic cavity.
(iv) left side lung ruptured in three places.
Opining that the death was due to injuries sustained to vital organs, Dr.Balakrishnan issued Ex.P.8 - Post Mortem Certificate. P.W.10 - Dr.Ilamvazhuthi had spoken about the autopsy conducted by Dr. Balakrishnan.

9. The scene of occurrence was inspected in the presence of witnesses. Ex.P.10 - Observation Mahazar and Ex.P.13 - Rough Plan were prepared on the scene of occurrence. A.2 to A.5 were arrested in Kovilpalayam on 10.06.1993 - 6.00 a.m. On being interrogated, A.2 voluntarily confessed to his guilt. Ex.P.14 - Admissible Portion of his confession led to the recovery of M.O.1 - Stick, M.O.2 - Aruval and other weapons - M.Os.3 to 7 under Ex.P.15 - Seizure Mahazar. A.1 was arrested on 30.06.1993 in Thittakkudi Junction and was remanded to judicial custody.

10. P.W.17 - Inspector of Police had taken up further investigation. He has further examined witnesses and upon completion of formalities of investigation, laid charge sheet against the Accused under Ss.1 47, 148, 323, 324 and 302 r/w 149 I.P.C.

11. To substantiate the charges against the Accused in the trial Court, P.Ws.1 to 17 were examined. Exs.P.1 to P.15 were marked and M.Os.1 to 7 were remanded to Court. The Accused were questioned under Sec.313 Crl.P.C. about the incriminating circumstances and evidence. The Accused denied all of them.

12. According to the Accused, P.Ws.1, 2 and 6 came to the house of A.1 and assaulted A.1 insisting upon him not to file any Civil Suit as proposed by him. As a self defence, A.1 pushed them out and in that process, victim Periyasami being an old man, aged 70 years fell on the street and sustained injuries. Further case of the Accused is that only A.1 went to the Police Station for the fracture injury sustained by him on his head and after informing the Police, he went to the hospital and was treated by P.W.10 and the Police declined to receive the complaint from A.1.

13. Upon consideration of the evidence, the learned III Additional Sessions Judge found that the previous enmity between the parties is well proved by the prosecution. The learned Judge further found that the discrepancy pointed out on the scene of occurrence would not in any way affect the prosecution version. In the light of the fact that A.1 also sustained injuries, the learned Sessions Judge found that in reacting to the attack on him, A.1 caused injury to deceased Periyasami and on those reasonings A.1 was found guilty under Sec.304 (ii) I.P.C. All other Accused were acquitted of the charges.

14. The charges framed against the Accused and the findings of the trial Court are as under:-

Charge	Gist of Offence	Against which accused	Finding
1	147 I.P.C.	Rioting	A2 to A6	A2 to A6 not guilty and were acquitted
2	148 I.P.C.	Rioting armed with deadly weapons.	A1	A1 not guilty and was acquitted.
3				

324 I.P.C.
for causing
injury to P.W.1.
A1

A1 not guilty and was acquitted.
4
323 I.P.C.
for causing injury to P.W.1.
A2 to A6
A2 to A.6 not guilty and were acquitted.

5
302 r/w 149 I.P.C. for causing death to Perimasamy
A1 to A6

A1 to A.6 not guilty and were acquitted u/s.203 r/w 149 IPC.
A.1 was found guilty u/s.304(ii) I.P.C. and sentenced to undergo R. I. for five years.

Aggrieved over the conviction, Appellant / A.1 has preferred this appeal.

15. Urging upon the various infirmities, learned Counsel for the Appellant / A.1 submitted that the case of the prosecution is bereft of spontaneity and naturalness. It is submitted that if P.W.1 and deceased Periyasami were chased and beaten, their reaction would have been entirely different. But, when they remained inactive without approaching the Police, serious doubts arise upon the prosecution case. Assailing the prosecution case, the learned Senior Counsel raised the following contentions:-

(i) Ex.P.11 - First Information Report was registered only on 08.06.1993 - 6.30 p.m. and the delay of about one day in registration of First Information Report is not properly explained; suggesting deliberation in bringing out Ex.P.1 t and Ex.P.11 - First Information Report; The original First Information Report is suppressed;
(ii) the inconsistency in the motive aspect;
(iii)irreconcilable inconsistency on the scene of occurrence;
(iv) discrepancies in the evidence as to how Periyasami sustained injuries;

Urging the above points, learned counsel submitted that the doubtful circumstances are so overwhelming outweighing the prosecution case and prayed for setting aside the conviction.

16. Countering the arguments of the Appellant / A.1, the

learned Government Advocate submitted that the motive aspect is well proved by the evidence of P.Ws.1 and 2. Submitting that the evidence of P.Ws.1 to 4 on the occurrence is cogent and consistent, the learned Government Advocate contended that the discrepancy in the narration of the occurrence or in the weapons used would not in any way affect the prosecution case. The learned Government Advocate further submitted that the discrepancies pointed out in the scene of occurrence are not substantial to affect the trustworthiness of

the testimony of P.Ws.1 to 4. Submitting that the trial Court has well assessed the evidence, the learned Government Advocate submitted that there is no reason warranting interference in the judgment of the trial Court.

17. In the light of various points urged by the Appellant / A.1, the point arises for consideration is whether verdict of conviction of A.1 calls for any interference warranting reversal of conviction under Sec.304 (ii) I.P.C. ?

18. Relationship between the parties is not disputed. Deceased Periyasami (Father of P.W.1) and Chinnapillai (Father of A.1) are brothers. The family owns some common property, which are not yet divided amongst the Pangalis. From the evidence of P.W.7 (Rengasamy) - Village Administrative Officer, it is clear that Survey No.146/2, Vayalappadi Village - an extent of 1.10 hectares of land stands jointly in the name of the family of Periyasamy and the Accused. Ex.P.3 is the joint Patta - Patta No.1193 for Survey No.146 which stands jointly in the name of Periyasamy and others as is seen from the following ..

"mg;ght[gilahr;rp kfd; bghparhkp (1)
bgUkhs; gilahr;rp kfd; bghparhkp (2)
rpd;dKj;J eha;f;fh; kfd; fypaK:h;j;jp (3)
rpd;dg;gps;is eha;f;fh; kfd; nrg;bgUkhs; (4)
kUij gilahr;rp (5) "

g[yvz; g[d;bra; gug;g[jPh;it

146/2 1/19/0 3/68

19. P.W.7 - V.A.O., has stated that the family of P.W.1 is in enjoyment of 0.50 acres. Ex.P.2 - Plan shows the area under the cultivation of P.W.1's family. The remaining land remains " jhpR" - uncultivated. Family of the Accused are not in cultivation of any portion. On dividing this property in Survey No.146/2, there are differences between both the families. The family of the Accused are insisting for division of the property, due to which there is enmity between both the families. P.W.1 has clearly spoken about the subsisting enmity between both the families. He has spoken about the joint Patta and the cultivation and about the enmity as is seen from the following version:-

@Tl;Lg;gl;lh epyk; vd; mg;gh bghparhkpjhd; rk;gtj;jpw;F K:d;W tUlj; jpw;F Kd;gpUe;nj gaph; bra;J te;jhh;/ mij vg;go gaph; bra;tJ vd;W vd; Dila je;ijf;Fk; vjphpfSf;Fk; Kd;tpnuhjk; ,Ue;J te;jJ/@

The same is asserted in Ex.P.1 - Complaint also. P.W.6 - Subramanian has denied any such enmity on enjoyment of the land. Based on his version, it is contended that the prosecution has not set forth a definite case as to the previous enmity and motive between the parties. P.W.6 though elder brother of P.W.1, being a driver, is settled in Chennai. Only for special occasions like Festival and others, he seems to be visiting the Village. P.W.6 may not have been aware of any such dispute or enmity on enjoyment of the land. His evidence cannot be taken as the yardstick for testing the version of P.W.1, who is settled in the Village and attending the agriculture. Version of P.W.6 denying any enmity on enjoyment of the lands does not in any way weaken the testimony of P.W.1 as to the enmity between both families on enjoyment / division of lands.

20. The second part of motive is that P.W.6 chastised Karpagam, daughter of A.1 on her conduct and studies, due to which the differences between both the families deepened further. P.Ws.1 and 6 have spoken about the chastisement of Karpagam. Thus differences between both the families on both limb of enmity is well proved by the prosecution. Proof of motive by itself cannot establish the prosecution case; however, it probablises the version of the prosecution.

21. Before adverting to the case and evidence, we may refer to an important aspect of delay in registration of the case, which is very much urged by the Appellant / A.1 while assailing the prosecution case. For better appreciation of the contentions urged, it is necessary to refer to certain dates:-

Occurrence ... 07.06.2993

4.00
p.m.

P.W.1 Paramasivam and deceased | 07.06.1993
Periyasamy were admitted in | ... ----------
Government Hospital, Ariyalur.| 5.00 p.m.

P.W.12-Head Constable received | ... 08.06.1993
intimation from Hospital. | ----------
12.10 p.m.

P.W.15-Sub Inspector of Police |
Kunnam Police Station received | ... 08.06.1993
the death intimation from the | ----------
Hospital through P.W.13 - | Evening.

Constable of Kunnam Police |
Station.

Recording of statement of | ... 08.06.1993
P.W.1 - Paramasivam by P.W.15.| ----------
Evening.

Registration of FIR (Ex.P.11) | ... 08.06.1993
in Crime No.139 of 1993. | ----------
6.30 p.m.

22. According to P.W.1, he and his father Periyasami were attacked by A.1 to A.6 with Aruval, Sticks and Stones. During the occurrence, they were chased and beaten. P.W.1 also sustained injury during the occurrence. Immediately after the attack, P.W.1 and his father Periyasami had only gone to the Hospital and not lodged any complaint. Pointing out the manner of attack on P.W.1 and his father, the learned Counsel for the Appellant / A.1 has submitted that if there had been any such violent attack on P.W.1 and his father, they would have immediately rushed to the Police Station and lodged a complaint. It is further contended that the delay in setting the law in motion throws serious doubts on the prosecution case. It is further contended that the inordinate delay of 24 hours in registration of the First Information Report remains unexplained throwing doubts on the prosecution case. No doubt, there is noticeable delay in the registration of the First Information Report. But, it does not raise any serious doubts for more than one reasons...

FIRSTLY: Injured P.W.1 and deceased Periyasamy were admitted in Ariyalur Government Hospital on 07.06.1993 - 5.00 p.m. itself. In the hospital, perhaps they have been waiting for the Police to contact them.

SECONDLY: Periyasami, being seriously injured, would have been anxious of getting good treatment for himself and also for P.W.1. P.W.1 himself being injured, it is nothing unusual for them to have waited in the Hospital without immediately going to the Police Station.

THIRDLY: At the time of admission before the Doctor - P.W.1 0, P.W.1 has clearly stated about the manner of assault " alleged to have been assaulted by four male and three female persons with sticks". The manner of attack in substance brings about the gist of the occurrence.

It is clear from the above that delay is not on the part of P.W.1. In fact, the delay in sending intimation to the Police from the Hospital is only procedural. The contention urged that Ex.P.1 - Complaint was prepared subsequently and that the earlier version was suppressed has no force.

23. OCCURRENCE. The occurrence on 07.06.1993 was in two parts. At about 1.00 p.m., P.W.6 - Subramanian went in a drunken mood and

asked A.2 - Karuppan as to why they were frequently quarrelling on the share of their land, which resulted in altercation between them. In that altercation, A.2, A.3 and A.5 had beaten P.W.6. To avoid any further problem, immediately thereafter, P.W.6 was sent to Chennai.

24. Questioning the conduct of P.W.1 in sending P.W.6 to Chennai, on the same day evening at 4.00 p.m., the problem originated between the Accused and P.W.1. Questioning as to how he could send away P.W.6 , P.W.1 was hit and assaulted by A.1, A.2 and A.4. When his father - deceased Periyasami tried to intervene to rescue his son, A.1 had beaten him on his left side back.

25. P.W.1, injured witness has spoken about the occurrence and the overtact of A.1 beating Periyasami on the left side back. P.W.2 (Chitra) - wife of P.W.1 has also spoken in unison with P.W.1. P.W.3 - Thaneswari and P.W.4 - Thenmozhi are the residents of Thenur. P.W.4 is the wife of Arasapadayachi, whose cattle shed is situated nearby shown as 'K' in Ex.P.13 - Plan. Cattle shed of P.W.4 being situated nearby, P.W.4 is the natural witness to speak about the occurrence. Likewise, P.W.3, though sister-in-law of P.W.1, a resident of Thenur Village, is a natural witness. Both P.Ws.3 and 4 have consistently spoken about the overtact of A.1 that he beat Periyasami on the left side back of abdomen.

26. The learned Sessions Judge disbelieved their version - (i) regarding assault to P.W.1 and (ii) regarding the overtact of other Accused. There is no definite finding as to the reliability of the evidence of P.Ws.3 and 4. In my view, the overtact of A.1 is proved by the cogent and consistent evidence of P.Ws.1 to 4. That Trial Court disbelieved a part of their testimony, does not affect their evidence on the overtact of A.1 causing injury to deceased Periyasami.

27. The fact that deceased Periyasami sustained injuries, is also established by the unimpeachable medical evidence. Injuries found on the body of the Periyasami are:

External Injuries:
(i) a big contusion injury situated on the left side renal region
(ii) a lacerated injury situated on the right upper 1/3rd of the lateral aspect of the right forearm
Internal Injuries:
THORAX: (i) clotted blood situated on the left side 3, 4 and 5 ribs.
(ii) 3, 4 and 5th ribs fracture at sterno costal junction.
(iii)about 500 ml of blood present in the Thoracic cavity.
(iv) left side lung ruptured in three places.

ABDOMEN: (i) A big blood clot situated on around the left renal size 2" X 3".
(ii) About 200 ml of blood present in the

abdominal cavity.

KIDNEY: Left Kidney ruptures, right kidney pale, normal.

Oral evidence of P.Ws.1 to 4 on the attack in left side back of Abdomen is thus corroborated by the unimpeachable medical evidence.

28. Scene of occurrence. The prosecution version is mainly assailed on the ground of material contradiction in the scene of occurrence. According to the prosecution witnesses, the occurrence was in front of the house of one Thangavel Teacher. Charge also refers to the scene of occurrence as " j';fnty; vd;gthpd; tPl;ow;F vjph;g;g[wk; ". At this juncture, it is relevant to refer to Ex.P.13 - Plan. North Street - Veppur Cart track is on the northern side. The South Street is on the southern side. " nkytPjp " joints the North Street and South Street. On either side of "nkytPjp ", are the houses. House of Thangavel shown as 'G' in Ex.P.13 - Plan, is on the western side of " nkytPjp ". Thangavel also owns a vacant site 'L' on the eastern side. House of Periyasami is also on the western side of " nkytPjp " - shown as 'A'. Houses of Accused are not situated in "nkytPjp ". Scene of occurrence is in the mid part of " nkytPjp ", opposite to the house of Thanagavel and his site. Thus, the version of P.Ws.1 and 4 regarding the scene of occurrence is strengthened by the objective finding during investigation by the observation of the I.O.

29. Ex.P.7 is the Accident Register of deceased Periyasami and Ex. P.9 is the Wound Certificate of P.W.1 - Paramasivam. In Exs.P.7 and P.9, the scene of occurrence is stated as " tPl;od; cs; ", " tPl; oy; " respectively. Pointing out the variation in the scene of occurrence between the oral evidence and the statement of P.W.1 in Ex.P.9, learned Counsel for the Appellant / A.1 submitted that such unexplained contradiction seriously undermines the prosecution version. This aspect was accepted by the trial Court and the learned Sessions Judge found that the witnesses have not come out with the true version. That finding of the trial Court cannot be countenanced. P.W.1 and deceased Periyasami were admitted in the Hospital at 5.00 p.m. immediately after the attack. Perhaps, overawed by the attack and by the turn of events, P.W.1 might have stated the scene of occurrence as " tPloy; ". Such statement before the the Doctor (P.W.10) does not affect the version of P.W.1 and the statement in Ex.P.1 that the occurrence was in the mid part of the Road.

30. The occurrence is in fact not denied by the Accused. But, according to the Accused, P.W.1 - Paramasivam, his father deceased Periyasami, P.W.5 - Murugesan and others went to the house of A.1 and had beaten A.1 and A.1 acting in self defence, pushed down Periyasami and Periyasami sustained injury on the left side renal region. This defence that A.1 pushed down Periyasami was not accepted by the trial Court. The trial Court was of the view that contusion on the left back of abdomen with abrasion over it and the abrasion on the right face would not have been caused by a fall and such defence was set forth only during questioning under Sec.313 Crl.P.C.

31. Considering the nature of injuries, particularly internal injuries that there was fracture on rib bones and rupture of left kidney, the learned Sessions Judge found that the defence taken by the Accused that the injuries might have been caused due to the fall, was highly improbable. Alternative possibility of sustaining the injuries with the corresponding internal injury was elicited from P.W.10. P.W.10 has stated that the injuries are possible by a violent fall. Considering the nature of internal injuries, in my view, such grievous internal injuries, rupturing the kidney and the fracture of the rib bones, would not have been caused by any amount of violent fall. That apart, there is no substantial suggestion as to where and how Periyasami could have so fallen violently. The learned Sessions Judge is right in finding that the injuries with corresponding internal injuries could not have been caused by mere fall.

32. In that circumstances, the trial Court found that A.1 acted in self defence in causing injury to Periyasami on the left back of the abdomen and further found that A.1 exceeded the right of private defence. The point whether A.1 acted in self defence and whether he has exceeded his right of private defence lies in a narrow compass.

33. Let us first consider whether A.1 had any right of private defence. The trial Court found that A.1 had right of private defence on the ground that A.1 sustained injuries in the occurrence and that seems to have substantially weighed in the minds of the trial Court that A.1 acted in self defence. Of course, A.1 sustained lacerated injury in the centre of the scalp and abrasion on the right shoulder (as per Ex.D.1 - Wound Certificate). The injuries were simple in nature. It was suggested to P.Ws.1 to 3 that prosecution witnesses had violently beaten A.1 and A.1 had acted in self defence. In this regard, it is submitted that the injuries on the person of A.1 are not explained by the prosecution.

34. Of course, A.1 has sustained injuries in the occurrence, which are not explained by the prosecution. The prosecution is obliged to explain the injuries sustained by the Accused..
(i) only it is superficial or trivial in nature;
(ii) only it has occurred in the course of the same occurrence;

Mere non-explanation of injuries on the person of A.1 by the prosecution does not ipso facto lead to the conclusion that the prosecution has not represented the truthful version. As noted earlier, injuries sustained by A.1 are only simple in nature. Therefore, it is not incumbent upon the prosecution to explain injuries. Merely because the prosecution has not explained the injuries, the Court cannot entertain doubts upon the prosecution case.

35. Further more, it cannot be laid down as a general principle that as soon as it is found that the injuries on the Accused are not explained, the plea of right of private defence is established shifting the

burden upon the prosecution that those injuries were caused to the Accused by the prosecution witnesses in self defence. Non explanation of injuries could only be a factor in judging the veracity of the prosecution witnesses. The case of prosecution is based upon the evidence of injured witness P.W.1 and his wife P.W.2 and natural witnesses P.Ws.3 and 4. While so, the learned Sessions Judge was not right in finding that merely because the prosecution has not explained the injuries on the person of A.1, A.1 has acted in self defence.

36. The case of the prosecution that A.1 could not have acted in self defence is strengthened by more than one aspect. P.W.1 and his party were not armed. They have not posed any danger to the Accused. The occurrence is in the middle of the Road " nkytPjp ". The Accused have no house in " nkytPjp ". They have gathered together in number (total six) and went to " nkytPjp ". The Accused were all armed with weapons - sticks and aruval. The preceding circumstances clearly point out that the Accused party went in aggressive mood inviting provocation, which cannot be lost sight of.

37. The right of private defence to the body commences as soon as reasonable apprehension of danger to the body arises. There is nothing in the evidence that either the deceased or P.W.1 posed any danger to the Accused either by holding out a threat or brandishing any weapon. It is not disputed that P.W.1 and Periyasami were not unarmed. There was no apprehension of danger to the body of the Accused or threat to committing any offence. In that view of the matter, the learned Sessions Judge was not right in finding that A.1 has acted in self defence. I differ from the view adopted by the learned Sessions Judge.

38. Though A.1 had not acted in self defence, he had no intention to cause death to Periyasami. He caused injury on the left side back of abdomen (,lJ tpyh KJF) with M.O.1 - stick. There was no premeditation. The injury was caused in a sudden fight. Though there was feeling of enmity, the immediate reason for the occurrence was the preceding occurrence, which was happened between P.W.6 and the Accused party. The quarrel at 4.00 p.m. is in sequel to the occurrence at Noon. In continuation of the same, both parties have aggressively come together. In the heat of passion, A.1 gave the blows on the deceased Periyasami. The injury being caused in a sudden fight by M.O.1 - Stick, conviction under Sec.304 (ii) I.P.C. is to be maintained. However, considering the circumstances and the nature of injury caused, this Court is of the view that the sentence of imprisonment of three years would meet the ends of justice.

39. Therefore, the judgment of the learned III Additional Sessions Judge, Trichy in S.C.No.79 of 1996 (dated 29.08.1996) convicting Appellant / A.1 under Sec.304 (ii) I.P.C. is confirmed. Five years sentence of Rigorous Imprisonment imposed on the Appellant / A.1 is reduced to a period of sentence of three years Rigorous Imprisonment and this appeal is partly allowed accordingly.

sbi

Index:Yes

Internet:Yes

To
1. The III Additional Sessions Judge,
Trichy.

2. The III Additional Sessions Judge,
Trichy, through

The Principal Sessions Judge,
Trichy.

3. The Judicial Magistrate, Perambalur.

4. The Judicial Magistrate, Perambalur
through

The chief Judicial Magistrate,
Trichy.

5. The District Collector, Trichy.

6. The Superintendent,
Central Prison, Trichy.

7. The Inspector of Police,
Kunnam Police Station,
Trichy.

8. The Public Prosecutor,
High Court, Madras.